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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MICHAEL D. CALMESE , a resident of Arizona,)	No. <u>CV-17-03955-PHX-SPL</u>
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
UNDER ARMOUR, INC. , a Maryland Corporation,)	
<u>Defendant</u>)	

COMPLAINT

Plaintiff, Michael D. Calmese ("Mr. Calmese"), alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other matters:

NATURE OF THE ACTION

1. This is a civil action for trademark infringement, trademark dilution, and unfair competition under the Lanham Act, 15 U.S.C. § 1051, et seq. and/or Arizona statutory and common law. Mr. Calmese seeks equitable and monetary relief from Defendant's willful violations of Mr. Calmese's trademark rights in its registered PROVE IT!® trademark, which Mr. Calmese extensively uses on T-SHIRTS and promotes in various ways, across multiple product lines, services, campaigns, events,

sports and materials. Defendant—a direct and major competitor—has launched a near identical PROVE IT T-SHIRT line of clothing, after being contacted by Plaintiff and opening up a dialog with Mr. Calmese in 2010. Defendant’s use of the mark PROVE IT is identical to Mr. Calmese’s longstanding use of its iconic PROVE IT!® trademark with taglines for these same types of products and sports. Defendant is well-aware of the source identifying power of taglines such as “I WILL.” For years, Defendant has used its own trademark tagline “I WILL” and has aggressively enforced its rights in that phrase to prevent consumer confusion, dilution, and other irreparable injury to its trademark rights. Here, Defendant’s use of Mr. Calmese’s registered PROVE IT!® trademark with “ride-along” taglines likewise threatens the same injury, if not worse, to Mr. Calmese and its registered and valuable commercial asset. Defendant’s use of PROVE IT!® infringes Michael Calmese’s long-established trademark rights, dilutes the distinctiveness of Mr. Calmese’s registered mark, and constitutes unfair competition.

2. Under Armour’s has been offering for sale, selling, and promoting clothing, like t-shirts and other related apparel and in connection with those products (“Disputed Goods/Services”) in connection with Defendant’s new line of PROVE IT T-Shirts in violation of Michael D. Calmese’s trademark rights in the registered PROVE IT!® trademark. As a result of Under Armour’s use of the PROVE IT! mark in connection with the Disputed Goods/Services, consumers are likely to confuse such products/services (and/or Michael D. Calmese) with Under Armour.

THE PARTIES

3. Michael D. Calmese is a resident of the State of Arizona having an address at 3046 N. 32nd Street Unit 321, Phoenix, Arizona 85018.
4. Upon information and belief, UNDER ARMOUR, INC. is a Maryland corporation with its principal place of business in Baltimore, Maryland at 1020 Hull Street, Baltimore, Maryland 21230.
5. Defendant's actions alleged herein were those of itself, its agents and/or licensees.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1138(a) & (b), and 28 U.S.C. § 1367(a).
7. This Court has jurisdiction over the federal trademark infringement claim pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a).
8. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and § 1367(a) as all claims herein form part of the same case or controversy.
9. Personal jurisdiction exists over the Defendant because it conducts substantial business in Arizona and therefore has sufficient contacts such that it would not offend traditional notions of fair play and substantial justice to subject Defendant to suit in this forum. Defendant has purposefully directed its harmful conduct alleged below at this forum, and purposefully availed itself of the benefits of Arizona with respect to the claims alleged herein. A substantial part of the protected intellectual property in

this action exists in this district and Defendant has offered the offending goods for sale in this district.

10. Jurisdiction is proper in the District of Arizona because Defendant has purposefully directed its PROVE IT branded t-shirts and other goods, services and business activities towards residents of this State. In Arizona and elsewhere, Defendant sells PROVE IT branded clothing namely t-shirts using Plaintiff's PROVE IT!® trademark through its website located at www.underarmour.com; through third-party online retailers; by catalog; through its own retail and outlet stores; and through multiple "brick and mortar" retail stores worldwide.

FACTUAL ALLEGATIONS

11. Mr. Calmese is engaged in the business of designing, developing, manufacturing, marketing and selling sports apparel which will soon include shoes, all of which prominently displays Mr. Calmese's Federal Registered Trademark "PROVE IT!®" Registration No. 2,202,454:



PROVE IT!®

12. Since 1998 Prove It!® branded products have been licensed, offered for sale, sold and distributed throughout the United States at key sporting events and Globally on the internet at www.USApruveit.com:



13. The registration for the 'PROVE IT!® Mark is attached as **Exhibit A** hereto.

Attached as **Exhibit B** is a true and correct copy of the April 28, 2017 Cease and Desist Notification sent to Under Armour.

14. The 'PROVE IT!® Mark enjoys a registration date of May 18, 1998, well before Under Armour's first use of "PROVE IT" sometime in 2016.

15. Because of its long-standing registration since May 18, 1998, the 'PROVE IT!® Mark became incontestable on September 15, 2010.

16. Also attached as **Exhibit D**, is a true and accurate copy of Plaintiff's Nunc Pro Tunc Trademark Assignment ("*nunc pro tunc*") filed in October of 2017.

17. The 'PROVE IT!® Mark enjoys an incontestable federal trademark registration.

18. In 1998, Mr. Calmese acquired U.S. Registration No. 2,202,454 for the mark PROVE IT! in International Class 25 for "Clothing", not limited to t-shirts. The PROVE IT!® Mark covers a wide range of sporting activities in multiple sports not limited to football, baseball, soccer, hockey, basketball and can again be purchased at www.USApruveit.com (Also see PROVE IT!® TV to see other markets):



19. The PROVE IT!® Mark was registered for more than 18 years prior to Under Armour's unauthorized use of "PROVE IT" in 2016 and 2017.

20. Since 1998, Mr. Calmese's line of products bearing the PROVE IT!® Mark have enjoyed substantial success and popularity, and have been sold on Mr. Calmese's USApruveit.com website, and by other retailers.

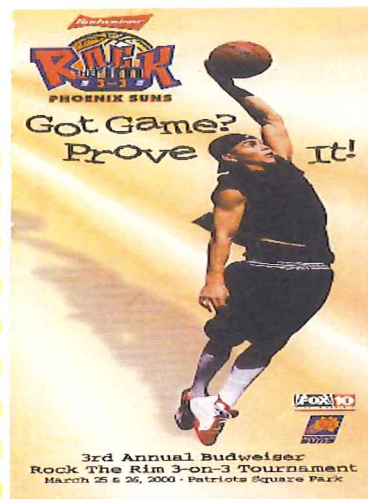
21. Products bearing the PROVE IT!® Mark have been continuously used and sold and are extremely valuable to Mr. Calmese.

22. In 2001 Mr. Calmese entered into a licensing agreement with the NBA's Phoenix Suns basketball team for the use of Mr. Calmese's PROVE IT!® Mark. In 2003 Mr. Calmese's

PROVE IT!® Racing team set a World Record in the National Hotrod Racing Association (“NHRA”). Mr. Calmese has even signed agreements and licensing agreements for State, national and global audiences with Eastbay Inc., TOYOTA and the GOODWILL GAMES as well as sponsored numerous charity events hosted by professional athletes:

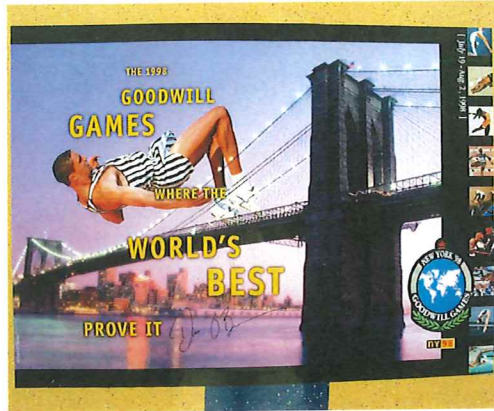


Joe Mozeris—Competition Eliminator Champion
Tucson, Ariz. NHRA-Lucas Drag Racing Series March 30, 2003

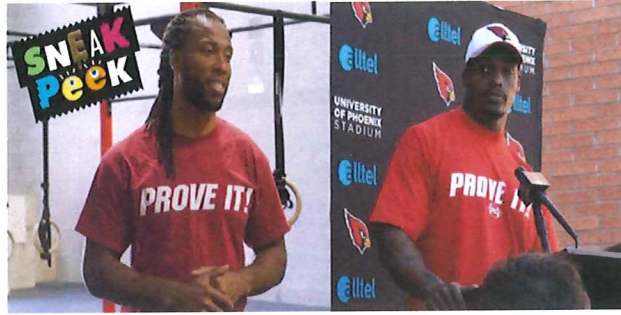


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reference not valid.



23. In 2009 the NFL's Arizona Cardinals football team wore PROVE IT!® branded t-shirts on their way to the SUPER BOWL and were seen on many local networks including the global Network ESPN, "wearing those red shirts that say prove it." Further, as recent as 2016 Mr. Calmese entered into a contract with the **Nickelodeon** Global network as a direct result of Mr. Calmese's marketing efforts proving PROVE IT!® branded products are still being view around the world on global and cable networks and again consumers can of course purchase Mr. Calmese's products all over the world on Mr. Calmese's website (pictures below are property of Nickelodeon and NFL Properties):



24. Famous Arizona professional athletes as seen above and like Jake Plummer have been wearing AND promoting PROVE IT!® branded produces since 1998:



25. Mr. Calmese has enforced his rights to protect the PROVE IT!® Mark each and every time a third party has used or attempted to apply for a confusingly similar mark without Mr. Calmese's authorization. All of the relevant third party applicants who have filed an application with the United States Patent Trademark Office ("PTO") have been contested and continue to be challenged including but not limited to USPTO Reg. No. 3756200 assigned to Mr. Calmese in 2005 and USPTO Reg. No. 5008789. The relevant non-applicants to use the PROVE IT!® Mark without Mr. Calmese authorization are notably adidas America Inc., and now Defendant Under Armour to name a few.

26. Not even two weeks after Mr. Calmese successfully defended himself at trial against adidas America Inc's., frivolous lawsuit In December of 2010 in the matter entitled *adidas America Inc. vs. Michael D. Calmese* Case No. 3:08-cv-00091, Mr. Calmese started up a dialog with Under Armour and wrote Defendant Under Armour two times and Under Armour responded once by email in 2010 and once with a letter in 2011 and basically stated Under Armour was, "moving in another direction" and that there was no interest in using Mr. Calmese's Prove It! trademark. The December 2010 Letter Mr. Calmese emailed to Under Armour is attached hereto as **Exhibit C**.
27. Under Armour was therefore fully aware of Mr. Calmese's trademark rights surround the PROVE IT!® Mark and more importantly the outcome in the adidas America Inc. vs. Michael D. Calmese lawsuit where the Oregon District Court ruled in Mr. Calmese's favor at trial concluding that only Mr. Calmese could continue to use the mark PROVE IT!® on clothing, not adidas, not Under Armour or any other third party.
28. Adidas America Inc. subsequently also LOST their frivolous PTO Cancellation Proceeding in April of 2016 nearly 10 years after filing it.
29. That Defendant has used PROVE IT in a highly dominant way over its other text is relevant to our claim.
30. The offensive and unauthorized PROVE IT T-shirts produced by Defendant always uses PROVE IT followed by a "ride-along" text that is sometimes in a different font, color and size.

31. Defendant's use is as follows ... its PROVE IT always printed across the chest, just like Plaintiff, separated by a box or followed by a line-break from PROVE IT which again makes is a "ride along" issue.
32. Under Armour's willful negligence with their failure to comply with the law and their own 2011 Agreement was done with malice and the willful intent to deceive the public and cause Mr. Calmese and his business great harm. In fact consumers have purchased the offending and unauthorized PROVE IT!® branded products from Under Armour because of the nearly identical use of the phrase PROVE IT across the chest on t-shirts just like Plaintiff's. Because of the dominate and near identical use of Mr. Calmese's PROVE IT!® Mark by Under Armour, these confused consumer believed there was some kind of sponsorship or affiliation between Mr. Calmese and Defendant Under Armour.

**Under Armour's Wrongful Use of the PROVE IT!® Mark and Under
Armour's Breach of the 2011 Agreement**

33. Upon information and belief, since at least April of 2016, Under Armour started marketing its new line of offending PROVE IT T-shirts featuring the sport of football, baseball, basketball and hockey all of which have a dominate use of the phrase PROVE IT placed across the chest of each t-shirt just like Mr. Calmese uses it. Indeed, as a result of Under Armour's marketing efforts which includes College Licensing, numerous athletic retailers across the country have offered for sale and sold these offensive and unauthorized PROVE IT T-shirts online and at retail stores.

Here are accurate copies of some of the offensive PROVE IT T-shirts produced by Under Armour without Mr. Calmese's authorization or permission:



Notwithstanding Under Armour's sports themed t-shirts using the PROVE IT!® Mark similar to Mr. Calmese, Under Armour has also made a t-shirt for in the woods using Mr. Calmese's registered PROVE IT!® Mark which is nearly identical:



34. Just some examples of websites that continue to market and sale the offensive

PROVE IT T-shirts produced by Under Armour are listed below which includes

Under Armour's own online retail stores and locations:

- [Under Armour 'Prove It on the Court' Graphic Tech T-Shirt \(Little Boys ...](https://shop.nordstrom.com/s/under-armour-prove-it-on-the-court-graphic.../4354369)
shop.nordstrom.com/s/under-armour-prove-it-on-the-court-graphic.../4354369

1. [Cached](#)

Free shipping and returns on **Under Armour 'Prove It on the Court' Graphic Tech T-Shirt (Little Boys & Big Boys)** at Nordstrom.com. On and off the court, he'll stay ...
You visited this page.

- [Under Armour Prove It On The Court Graphic-Print T-Shirt, Toddler ...](https://www.macys.com/.../under-armour-prove-it-on-the-court-graphic-print-t-shirt-t...)
https://www.macys.com/.../under-armour-prove-it-on-the-court-graphic-print-t-shirt-t...

1. [Cached](#)

Shop for Shirts & Tees online at Macys.com. On or off the court, this graphic-print crewneck from **Under Armour** is fast-drying and ultra-soft.

- [Under Armour Men's Prove It On The Court Graphic Basketball T-Shirt ...](https://www.dickssportinggoods.com/.../under-armour...prove-it.../16uarmprvtnthertx...)
https://www.dickssportinggoods.com/.../under-armour...prove-it.../16uarmprvtnthertx...

1. [Cached](#)

Shop a wide selection of **Under Armour Men's Prove It On The Court Graphic Basketball T-Shirt** at DICK'S Sporting Goods and order online for the finest quality ...

- [Under Armour Boys' Prove It In The Woods T-Shirt | DICK'S Sporting ...](https://www.dickssportinggoods.com/.../under-armour...prove-it.../under-armour-boy...)
https://www.dickssportinggoods.com/.../under-armour...prove-it.../under-armour-boy...

1. [Cached](#)

Shop a wide selection of **Under Armour Boys' Prove It In The Woods T-Shirt** at DICK'S Sporting Goods and order online for the finest quality products from the top ...

- [Under Armour® Boys' 8-20 Short Sleeve Prove It At The Plate Tee](https://www.younkers.com/.../under-armour-boys-8-20-short-sleeve-prove-it-at-the-pl...)
https://www.younkers.com/.../under-armour-boys-8-20-short-sleeve-prove-it-at-the-pl...

1. [Cached](#)

Rating: 5 - 3 reviews

The **Prove It At The Plate Tee** from **Under Armour** features a material that wicks sweat & dries really fast. Polyester; Loose: fuller cut for complete comfort ...

- [South Carolina Gamecocks Youth Under Armour Prove It On The Field ...](http://www.garnetandblacktraditions.com/South...Under-Armour-Prove-It.../Product)
www.garnetandblacktraditions.com/South...Under-Armour-Prove-It.../Product

1. [Cached](#)

Let your little Gamecock **Prove It On The Field** with this **Under Armour** performance t-shirt! Crafted with UA's Heat Gear technology and anti-odor fabric, this neon ...

- [Under Armour Kids Prove It On The Ice Short Sleeve Tee Big Kids ...](https://www.zappos.com/under-armour...prove-it.../.zso?...under+armour...prove...un...)
https://www.zappos.com/under-armour...prove-it.../.zso?...under+armour...prove...un...

1. [Cached](#)

ADvV1leAlF4gra	ChZ1bmRlcjBhcn	en
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- [Under Armour Youth T-shirt, Prove it on the Field | MSU Bookstore](#)

www.msubookstore.org/MerchDetail.aspx?...num...under%20armour

1. [Cached](#)

Under Armour Youth T-shirt, **Prove it on the Field**; Youth **Under Armour**; 100% polyester; Navy t-shirt; **Prove it on the Field** with MSU Bobcat logo; Heat Gear ...

- [Under Armour Youth Prove it on the Ice T-Shirt - Sale & Clearance ...](#)

https://www.modells.com/.../under_armour_youth_prove_it_on_the_ice_t-shirt-1281...

1. [Cached](#)

Under Armour Youth **Prove it on the Ice T-Shirt**. Item # 1281873-001. **Under Armour**. 0.0. Rated 0 out of 5 stars. No Reviews Write the First Review. We regret that ...

- [UNDER ARMOUR Boys' UA Prove It At The Plate T-Shirt | Shop Your ...](#)

www.shopyourway.com/under-armour-boys-ua-prove-it-at-the-plate.../452306896

1. [Cached](#)

Sep 16, 2015 - UA Techâ,, fabric is quick-drying, ultra-soft & has a more natural feel Moisture Transport System wicks sweat & dries fast Anti-odor technology ...

- [Under Armour® Prove It On The Field Long Sleeve Tee Toddler Boys ...](#)

www.belk.com › Kids › Boys' Clothing › Back to Boys' Clothing

1. [Cached](#)

Your little active guy with love this bold tee! Crafted from comfy cotton with a sleek graphic on the front, this go-to top is ideal for his versatile style.

- [Under Armour® 2-Piece 'Prove It On The Court' Shirt and Short Set | belk](#)

www.belk.com › Kids › Baby Clothing › Outfits & Sets › Back to Outfits & Sets

1. [Cached](#)

\$27.99 - Out of stock

It's never too early to get him used to the feeling of a basketball in his hands and this sleek shirt and short set by **Under Armour®** is just the way to do it!

- [Under Armour Shirt Boys Extra Large XL Prove It on The Court ... - eBay](#)

<https://www.ebay.com> › ... › Boys' Clothing (Sizes 4 & Up) › Tops, Shirts & T-Shirts

1. [Cached](#)

item 1 **Under Armour Prove It On the Court Basketball T-Shirt 1290562 Gray Size 2XL - Under Armour Prove It On the Court Basketball T-Shirt 1290562 Gray Size ...**

[Youth Under Armour 'Prove it on the Field' Football Tee | DuBois Book ...](#)

www.duboisbookstore.com/uc/MerchDetail.aspx?MerchID=1389216&type=6

1. [Cached](#)

This youth red performance material tee says "**Prove it on the Field**" in patterned white and grey letters with **football** hash marks underneath it followed by the ...

35. Not satisfied with infringing the PROVE IT!® Mark by featuring different sports like Mr. Calmese does, Under Armour has escalated their infringement by offering for sale these types of offensive and unauthorized PROVE IT T-shirts with multiple colleges logos on them:



36. Under Armour's use of the PROVE IT! Mark for its variety of PROVE IT T-shirts is not only is confusingly similar to Mr. Calmese use and infringes on the PROVE IT!® Mark, it also expressly breaches a prior 2011 agreement between Under Armour and Mr. Calmese where Under Armour stated it was not interested in using Mr. Calmese's PROVE IT!® mark in Defendant's second response to Mr. Calmese's December 2010 correspondence.

37. In December of 2010 Mr. Calmese sent Under Armour a Letter that Defendant responded to in early 2011. Under Armour stated they were not interested in using Mr. Calmese's registered PROVE IT!® trademark because they were, "moving in another direction" and wished Mr. Calmese good luck. Under Armour's new uses of

the PROVE IT!® Mark is a clear violation of Under Armour's own terms. Again see **Exhibit C**.

38. After Plaintiff learned that Defendant was wrongfully using the PROVE IT!® Mark, Plaintiff contacted Defendant. When Plaintiffs demanded that Defendants cease and desist use of the PROVE IT!® Mark September 18, 2017, Defendant refused to acknowledge that its conduct was infringing. Again see **Exhibit B**.
39. On information and belief, Under Armour has continued marketing and selling the offensive PROVE IT T-shirts using the PROVE IT!® Mark up to the present.

INJURY TO MICHAEL D. CALMESE AND THE PUBLIC

40. Defendant's unauthorized use of Mr. Calmese's PROVE IT!® trademark is likely to cause confusion, mistake, and deception as to the source or origin of Defendant and/or its products, and is likely to falsely suggest a sponsorship, connection, or association of Defendant, its products, its services, and/or its commercial activities with Mr. Calmese.
41. Defendant's unauthorized use of Mr. Calmese's registered PROVE IT!® trademark and taglines has damaged and irreparably injured and, if permitted to continue, will further damage and irreparably injure Mr. Calmese and Plaintiff's PROVE IT!® trademark.
42. Defendant's unauthorized use of Mr. Calmese's registered PROVE IT!® trademark and taglines has irreparably injured, and, if permitted to persist, will continue to irreparably injure the public, who has an interest in being free from confusion.

43. Defendant's unauthorized use of Mr. Calmese's registered PROVE IT!® trademark is likely to dilute the distinctiveness and value of Mr. Calmese's registered PROVE IT!® trademark.

FIRST CLAIM FOR RELIEF Trademark Infringement Under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1)

44. Michael D. Calmese repeats and realleges each and every allegation set forth in Paragraphs 1 through 43 of this Complaint.

45. Without Michael D. Calmese's consent, Defendant used and continues to use in commerce reproductions, copies, and colorable imitations of Michael D. Calmese's registered PROVE IT!® trademark in connection with the offering, distribution, and/or advertising of goods and services, which is likely to cause confusion, or to cause mistake, or to deceive, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

SECOND CLAIM FOR RELIEF Trademark Infringement, False Designation of Origin, Passing Off, and Unfair Competition Under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

46. Under Armour repeats and realleges each and every allegation set forth in Paragraphs 1 through 45 of this Complaint.

47. Defendant's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Defendant, its products, its services, and/or its commercial activities by or with Michael D. Calmese,

and thus constitute trademark infringement, false designation of origin, passing off, and unfair competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

THIRD CLAIM FOR RELIEF Trademark Dilution Under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)

48. Michael D. Calmese repeats and re-alleges each and every allegation set forth in Paragraphs 1 through 47.
49. Michael D. Calmese's PROVE IT!® trademark is famous, as that term is used in 15 U.S.C. § 1125(c), and was famous before Under Armour first use of the PROVE IT mark, based on, among other things, the inherent distinctiveness and federal registration of Michael D. Calmese's registered PROVE IT!® mark and the extensive nationwide use, advertising, promotion, and recognition of that mark.
50. Under Armour's actions, as described above, are likely to dilute the distinctive quality of Michael D. Calmese's PROVE IT!® mark by blurring in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), as amended by the Trademark Dilution Revision Act of 2006.

FOURTH CLAIM FOR RELIEF Common-Law Trademark Infringement and Unfair Competition

51. Michael D. Calmese repeats and re-alleges each and every allegation set forth in Paragraphs 1 through 50.
52. Under Armour's actions, as described above, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Under Armour with Michael D. Calmese, or as to the origin, sponsorship, or approval of

Under Armour, its products, and its commercial activities by or with Mr. Calmese such that Under Armour's acts constitute infringement of Mr. Calmese's proprietary rights in its registered PROVE IT!® Mark, misappropriation of Mr. Calmese's goodwill in those marks, and unfair competition under Arizona common law.

FIFTH CLAIM FOR RELIEF Dilution of the PROVE IT!® Mark Under Arizona Law

53. Under Armour repeats and re-alleges each and every allegation set forth in Paragraphs 1 through 52 of these counterclaims.
54. The PROVE IT!® mark is widely recognized by the general consuming public in Arizona as a designation of source for Michael D. Calmese's products and services.
55. Through extensive use and promotion, Michael D. Calmese's distinctive PROVE IT!® mark is famous, as defined under A.R.S. 44-1448.01, and was famous before Under Armour's first use of the PROVE IT!® mark.
56. Under Armour's use of Mr. Calmese's registered PROVE IT!® mark, as described above, is likely to dilute the distinctive quality of the famous PROVE IT!® mark, as defined under A.R.S. 44-1448.01.
57. Under Armour seeks to derive a commercial benefit from the value and goodwill associated with the famous PROVE IT!® mark.
58. On information and belief, Under Armour's unlawful use of its dilutive PROVE IT marks is willful and deliberate and with an intent to misappropriate the benefit of Michael Calmese's goodwill.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Michael D. Calmese respectfully demands a trial by jury on all issues properly triable by a jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Michael Calmese respectfully requests that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief, including but not limited to the following:

A. An Order declaring that Defendant Under Armour's use of the PROVE IT!® mark for the Disputed Goods/Services infringes Michael Calmese's PROVE IT!® Mark, dilutes Michael Calmese's PROVE IT!® mark, and constitutes unfair competition under federal and/or state law, as detailed above;

B. A permanent injunction enjoining Under Armour and its employees, agents, partners, officers, directors, owners, shareholders, principals, subsidiaries, related companies, affiliates, distributors, dealers, and all persons in active concert or participation with any of them:

1. From using, registering, or seeking to register the PROVE IT!® mark in any form, including with any other "ride-along" wording or designs, in connection with the Disputed Goods/Services, and from using any other marks, logos, designs, designations, or indicators that are confusingly similar to any of Michael Calmese's PROVE IT!® Mark and/or dilutive of Michael Calmese's PROVE IT!® mark;

2. From representing by any means whatsoever, directly or indirectly, that Under Armour, any products or services offered by Under Armour, or any activities undertaken by Under Armour, are associated or connected in any way with Michael Calmese or sponsored by or affiliated with Michael Calmese in any way;

3. From assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs B (1)-(2);

4. An Order directing Defendant Under Armour to destroy all the Disputed Goods/Services and any packaging, signage, advertisements, promotional materials, stationery, forms, and/or any other materials and things in connection with those products/services that contain or bear the PROVE IT!® mark or any other marks, logos, designs, designations, or indicators that are confusingly similar to any of Michael D. Calmese's PROVE IT!® Mark and/or dilutive of Mr. Calmese's PROVE IT!® mark;

C. An Order directing that, within thirty (30) days after the entry of the injunction, Under Armour file with this Court and serve on Michael D. Calmese a report in writing and under oath setting forth in detail the manner and form in which Under Armour has complied with the injunction;


D. An Order requiring Defendant Under Armour to account for and pay to Michael D. Calmese any and all profits arising from the foregoing acts, and increasing such profits, in accordance with 15 U.S.C. § 1117 and other applicable laws;

E. An Order requiring Under Armour to pay Plaintiff Michael Calmese damages in an amount as yet undetermined caused by the foregoing acts, and trebling such damages in accordance with 15 U.S.C. § 1117 and other applicable laws;

F. Statutory damages of up to \$2 million per type of goods or services sold, offered for sale, or distributed, under 15 U.S.C. § 1117(c) for infringement of a registered mark, including by use of a counterfeit mark;

G. An Order requiring Under Armour to pay Michael Calmese all of its litigation expenses, including reasonable attorneys' fees and the costs of this action pursuant to 15 U.S.C. § 1117, A.R.S. 44-1451, and other applicable laws; and Other relief as the Court may deem appropriate.

Respectfully submitted this 26th day of October 2017

By: 
Michael D. Calmese / Attorney Pro Se Litigant